

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 852 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DEVILA W/O PARSHOTTAMBHAI      NATHABHAI MAKWANA

Versus

COMMISSIONER OF POLICE

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Appearance:

MR NM KAPADIA for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner herein is the wife of the detenu-Parshottambhai Nathabhai Makvana, and she challenges the order of preventive detention dated 15th September, 1998, made against the said Parshottambhai by

the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It is alleged that the detenu is a bootlegger and an offence being CR No. 254/98 under the prohibition law has been registered against the detenu. In the incident in question, large quantity of country liquor was found from the possession of the detenu. Besides the said registered offence, some two witnesses have given statements before the police in respect of the bootlegging activities carried on by the detenu and the consequential breach of public order. Relying upon the aforesaid material, the Detaining Authority found the detenu to be a 'bootlegger' and his activities to be prejudicial to the maintenance of the public order. It is apparent that the subjective satisfaction recorded by the Detaining Authority is based on the police papers in respect of the above referred offence registered against the detenu and the two statements given by the witnesses. The identity of the witnesses has been withheld under the powers conferred under section 9 (2) of the Act. It appears that the order of detention has been made in hot hurry and the Detaining Authority has not verified the genuineness of the statements given by the concerned witnesses. Be it noted that the offence was registered against the detenu on 14th September, 1998 and the detenu was arrested on the same day. On 15th September, 1998, the statements of the witnesses have been recorded by a Police Sub Inspector, and have been verified by the Detaining Authority on the same day, and the impugned order too has been made on 15th September, 1998. In my view, this leaves no time for the police officer to verify the genuineness of the contents of the statements made by the witnesses. Besides, even the Detaining Authority has recorded his subjective satisfaction in respect of the genuineness of the apprehension voiced by the witnesses. What is important is not only the genuineness of the apprehension voiced by the witnesses is required to be ascertained, even the correctness of the statements given by them is also required to be ascertained. In my view, the Detaining Authority has failed to apply his mind to this aspect and has failed to ascertain whether the statements given by the concerned witnesses were genuine or not. In absence of such verification, the reliance placed on the said statements and the subjective satisfaction recorded thereon, shall be vitiated. Consequently, the order of detention also is vitiated.

For the aforesaid reasons, the petition is allowed. The impugned order dated 15th September 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The detenu-Parshottambhai Nathabhai Makvana, unless he is required to be detained in some other case, is ordered to be released forthwith.

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JOSHI